

1982 WL 189296 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1982

***1 SUBJECT: Public Employees—Marriage as Disqualification**

An employee of the Commission cannot be dismissed because of marriage to another Commission employee.

Mr. Jasper E. Harmon, Jr.

Executive Director

QUESTION:

Does the South Carolina Tax Commission have ‘the authority to set rules and regulations governing whether employees who are working at the Tax Commission can marry and remain employed’?

APPLICABLE LAW:

[Section 8-11-210, et seq., of the 1976 Code](#) of Laws.

DISCUSSION:

The Tax Commission has a policy that provides:

‘Effective immediately, no person shall be employed by the Tax Commission if related to another employee of the Tax Commission, as first cousin or closer kin, by blood or by marriage. The above rule shall not apply to presently employed personnel.’

The inquiry is whether this policy is valid. Factually, two of the Commission's employees plan to marry. Each has been employed for some period and both hold permanent classified positions. More narrowly, the question is whether either or both of these employees may be dismissed.

The General Assembly, by Act 190, Acts of 1975, now codified as [§ 8-11-210](#), et seq., created the State Personnel Division. It also made several findings of fact and one was the need for uniform ‘employment policies’. The purpose of the Division was set forth as:

‘It is the purpose of this act to establish a State Personnel Division under the State Budget and Control Board to administer a comprehensive system of personnel administration responsive to the needs of the employees and agencies and essential to the efficient operation of State Government. * * *.’

The act further provided that the Division was to be:

‘* * * responsive to agency needs for all personnel function * * *.’ (Emphasis added)

The General Assembly by such evidenced its intent to confer upon this Division the authority to establish the policies regarding employment. That intent is controlling. (For cases see 17 S.C.D., Statutes, Key 174, et seq.)

The Budget and Control Board was by the act, inter alia, authorized and directed to:

‘(3) After coordinating with agencies served, develop fair employment policies to assure that appointments to position in the State classified service are made on the basis of merit and fitness without regard to race, sex, age, religion, political affiliation or national origin.’ (Emphasis added)

Regulation 97-50 of the Personnel Division provides for equal employment opportunity. It further prohibits discrimination:

‘in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration because of political or religious opinion or affiliation or because of race, national origin, or other non-merit factors.’

We do not find any law or regulation that would require that either or both of the employees be dismissed. Marriage is not a factor in the regulation above quoted. The regulation precludes the dismissal as it would place retention of the employees upon a non-merit factor, marriage.

*2 The General Assembly has delegated the authority to establish employment policy to the Budget and Control Board. The Commission is thus without authority to maintain its policy.

The conclusion herein reached is also supported by the act that prohibits discrimination by reason of sex. The Commission could not dismiss either the husband or the wife without being confronted with the accusation of sex discrimination.

Additionally, we are informed that the Commission's policy is not the practice or policy of most State departments. Uniformity in employment policy was the purpose of the 1975 act.

CONCLUSION:

It is the opinion of this office that an employee of the Commission cannot be dismissed because of marriage to another Commission employee.

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